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## Protection of women from the domestic violence: A human rights perspective

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### Abstract

The basic theme of the paper is to provide the analysis of the Domestic Violence Law in India. The domestic violence legislation is a piece of social legislation which is intended to cure the age-old evil of the society. The legislation is a specialized effort of the legislature to tackle the evil. The paper explores that the domestic violence is a complex and multifaceted social problem in Indian society which is prevalent in every society throughout the world irrespective of any differences though the magnitude may change. The entire social, cultural and economic pattern of contemporary society is responsible for the degraded and unequal status of women. The paper further considers the causes of domestic violence in India. India is not full proof in order to root out the evil of violence in intimate relations as the Indian social system being based on the patriarchal structure needs fundamental changes from within. The deeply entrenched patriarchal value system which looks up male child as an asset for the future and looks down upon girl child as liabilities and burden, this itself contributes in discrimination and family violence. To put an end to domestic violence in the society requires the full proof legislation and the legislation can only be effective mode of social change when the internalization process becomes effective with the attitudinal change to create positive egalitarian atmosphere towards empowerment in real sense. The paper also an attempt to consolidate the law on the point of various activities of violence committed against the woman in domestic relationship.

**Keywords:** Domestic violence, human rights, Law in India

### Introduction

“Woman feels as keenly, thinks as clearly, as a man. She is her sphere work as useful as a man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries she does not become the husband’s servant but his equal partner. If his work is more important in life of the community, her’s is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals.” Lord Denning<sup>[1]</sup>.

Woman has always been an object of gross and severs violence at the hands of man. Crime against women has existed invariably with time and place. The types and trends of crime against women change with the change in the techniques. They are accorded a lower status in the society and are made and used as objects of man’s enjoyment and pleasure. Its culmination has been their regular exploitation and victimization. On the continuation of this practice exploiters became culturally violent, having opted violence as a way of life<sup>[2]</sup>. “The vulnerability of women in the country is since time immemorial. The vulnerable person is one who has little choice or capacity to escape pain and injury. A woman in the country has been compelled to be a victim, and helpless and powerless and consequently she is bound to suffer all injustice in silence. The abuse of vulnerability is a situation, in which an individual has no acceptable alternative but to submit to the abuse involved. This long standing evil practice has been given legal responses in every era, but still the processed subjugation has not put an end to her miseries, as crime against her is an outcome of their long history of deprivation of the socio-economic rights. The violence shackles her personality in to pieces and empowers her by making her more vulnerable when it is takes place in four walls of her own her life becomes tragic when she is unsafe within her intimate relations. According to the myth of the family as a sanctuary of tranquility of harmony, domestic violence is a veritable incongruity, a contradiction in terms. This violence shatters the peaceful image of home, the safety that kinship provides<sup>[3]</sup>.

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The domestic violence is found across nations and cultures world-wide. The United Nations Committee on 'Convention on Elimination of All Forms of Discriminations against Women' [4] in its General Recommendations has recommended that state parties should act to protect women against violence of any kind especially that occurring within family. Many girls and women still do not have equal opportunities to realize rights recognized by law. In many countries, women are not entitled to own property or inherit land. Social exclusion, female genital mutilation, trafficking, restricted mobility and early marriage among others, deny the right to health to women and girls and increase illness and death throughout the life-course. Although females represent half of the world's people, women and girls make up 70 percent of the world's poor and two-thirds of the world's illiterate population. The low status of women in many places prevents them from having control over their own lives and bodies. Across the globe, societal norms and laws deny women access to education, health services, political participation, and economic opportunities. The status of women internationally can be assessed with the help of some statistical data with relation to her income, education, health, political participation, access to resources, water and sanitation etc [5]. To know about particular social evil, it is essential to trace its historical perspective and the nature of the widespread issue in various dimensions at global level and specifically in India as the prevailing circumstances, social; cultural traditional factors play vital role in law making, its implementation and its reforms. It is also necessary to look in to the consequences, the forms and magnitude of the problem with reference to India. Domestic violence against women in India is an age old phenomenon. Women were considered to be weak, vulnerable and in a position to be exploited. Violence has long been accepted as something that happens to women. Family which was perceived as an arena of love, affection, gentleness and a centre of solidarity and warmth had become a centre of exploitation, assault and violence ranging from slapping, hitting, homicidal assaults for dowry or any other reasons [6]. The position of wife was that she had to follow duties with no rights and privileges. In fact it was her highest duty to obey her husband's words, for her the husband was the God or Master. The relation between husband and wife was founded on authoritarianism and submissiveness basis and she was always looked with suspicion. The reference from Ramayana and Mahabharata clearly depicts the prevalence of family conflict and violence on women. Lord Rama on the mere suspicion of a common man left Sita, or Lord Parashurama murdered his mother at the command of his father and the instance of Draupadi being publicly tortured by Kauravas these illustrations provide the clear picture of the male dominance and female subjugation, and being subject to victimization with no reason. Puranic Verses also give references of incidences of domestic violence against women when it provides "A man should chastise his wife and slaves with a string of thread or a rope made of blades of Vera grass [7]. The ancient Indian Scriptures played prominent role in lowering the image of woman in our society. Manu, the ancient law giver equated woman with slave and his laws epitomize complete subjugation of women to man and they are still sanctioned codes of conduct prescribed for and accepted by and large by women [8].

### Domestic Violence and its Causes

"The fight is not for woman's status but for human worth. The claim is not to end the inequality of women but to restore universal justice. The bid is not for the loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes," Justice Krishna Iyer [9].

Webster's New Collegiate Dictionary [10] defines violence as exertion of any physical force for instance violent treatment or procedure, perforation infringement, outrage assault, strength energy activity displayed or exerted, forcible or destructive action or force. The Chambers twentieth century dictionary describes violence as excessive or unjustifiable use of force. Oxford Dictionary [11] defines violence as behavior involving physical force intended to hurt, damage or kill. According to Encyclopedia of crime and Justice, Violence is a general term referring to all types of behavior either threatening or actual that results in the damage or destruction of property or the injury or death of individual. According to Black's Law Dictionary [12] violence means unjust or unwarranted use offeree usually accompanied by fury, vehemence or outrage physical force unlawfully exerted with intent to harm. The dictionaries in general define violence and not domestic violence in specific, but the meaning to the word domestic violence can only be deduced from particular socio-cultural context, gender specifications and the patriarchal form of family or so. Black's Dictionary defined domestic violence as violence between members of household, usually spouses, an assault or other violent act committed by one member of a household against another [13]. Domestic violence is violent victimization of woman within the boundaries of family, usually by men. Domestic violence is in majority of cases violence against women by the members of house where she resides. It can be the husband, his parents, or siblings or any other resident who has the overt or covert latitude for actions that can cause physical or mental agonies to women. It happens behind closed doors and is most often denied by the very women who has been victim of violence [14].

The concept of domestic violence can more precisely characterize as follows. The following are the characteristics of the domestic violence

- Domestic Violence is a victimization of woman within boundaries of family; a woman may be a girl child, married, elderly or like relationship
- Violence can be of any type of harm physical, psychological, emotional, spiritual, economical etc. it includes even threat or aggressive behavior towards her not only her physical being and even towards her self-respect, and self-confidence too.
- Domestic violence against woman is a systematic and structural mechanism of patriarchal control of woman that is built up on male superiority and female inferiority.
- The violence takes place in private sphere i. e home where she expects love, affection, care, warmth and the wrongdoer is her own family members.
- It is a sex-stereotyped role expectation of society for men to be predominant and women to be subordinate.
- It is a gender based violence that reflects the existing asymmetry in power relationship between men and women that perpetuates the subordination and devaluation of female as opposed to male and exists within the framework of patriarchy as a symbolic system

- that denies women their rights and reproduces the imbalance and inequity between the sexes, it is rightly described as gender specific crime occurring within family between individuals related through intimacy, blood or law
- g. Domestic violence refers to a pattern of violent abusive and coercive behavior by one partner in a relationship to gain and maintain power and control over another person's life.
  - h. Domestic violence is now all over the world increasing concern by world community as a result of feminist movements. Terms like Marital violence, conjugal violence, are used to connote the violence between spouses while other terms like Inter-family violence, domestic violence are used to broadly include violence in spouses, exhibited against children, between siblings and generally between persons who shared a mutual residence and live in close relationship.
  - i. Violence against woman is the most shameful human rights violation. It knows no boundaries of geography, culture, caste, wealth or else. It is a universal phenomenon found in developing, developed and undeveloped countries in varying forms and magnitude [15].

#### **Definition of Domestic Violence under the Protection of Women from the Domestic Violence Act 2005**

The recently introduced 'The Protection of Women from Domestic Violence Act, 2005' (here in after referred as PWDVA 2005) defines the expression "domestic violence" to include actual abuse or threat of abuse-physical, sexual, verbal, emotional or economic violence. Section 3 of the Act says that any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it,

- a. Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b. harasses, harms, injures or endangers the aggrieved person with a view to coerce him or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- c. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- d. otherwise injures or causes harm, whether physical or mental, to the aggrieved person... Section 3 has provided a explanatory note. 51 According to it 'physical abuse' means any act or conduct which is of done to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person. It includes assault, criminal intimidation and criminal force.

'Sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. 'Verbal and emotional abuse' includes. Insults, Ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and repeated threats to cause physical pain to any person in whom the aggrieved person is interested. The word 'Economic abuse' includes

- a. Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
- b. Disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds or other property in which the aggrieved person has an interest or is entitled to use by virtues of the domestic relationship or which may be reasonable required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- c. Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household [16].

#### **Causes of domestic violence**

##### **a. Social Causes**

In Indian society since time immemorial patriarchy is prevalent in social structure where the whole structure is male dominated. The head of the family possesses all inclusive powers. He is the administrator of all the property and persons living in family, wife after marriage have to leave her parents and shift permanently at her conjugal home. The children are known by the name of family of father. The male predominance, excesses of authority and power structure itself makes female vulnerable. She has no separate identity but 'first the daughter, next wife and lastly the mother of man. Thus man occupies superior status and women merely his appendage [17].

##### **b. Family system family disorganization**

H. M. Jhonson has defined family as "a group of two or more persons related by blood, marriage, or adoption and are residing together." Anderson and Parker have defined it as "it is a socially recognized unit of people related to each other by kinship, marital, and legal ties." In India where we follow patriarchal form of family the male role that of "a dominant Patriarch" who rules and a female role "an obedient help-mate" determines the power control. Family disorganization caused by marital mal adjustments and the changing dimensions of values clashes with and results in the violent attack on vulnerable class [18].

##### **c. Gender role socialization**

It is a process by which children get transformed in to social beings and learn the norms, values and socially accepted behaviour and disapproved behavior also. In case of girl child we see right from her birth or in some cases even before her birth she is treated in different way. She is taught and reared differently from a boy by giving less food with less nutritional value, in her behavioral pattern she is taught withdrawal and in terms of personality traits expected to be submissive, without questioning to suffer silently. This conditioning in the social structure is so strong that, it deters her from

realizing her potentials. A societal norm expects her to be the most obedient, dutiful, shy, submissive, timid and possessing feminine qualities. Happenings of her childhood are carried on till end of her life. Thus the whole processes of socialization are oriented towards internalization of the traits of dependency and subordination and devalue her status<sup>[19]</sup>.

**d. Cultural lag and conflict of ideas**

The traditional role of woman of rearing and caring housewife does not match with today's working woman and thus create confusion. On one hand she is expected to choose to adhere to her traditional role or changed occupational demand. She has to fulfill all the aspirations of her in-laws and partner on one hand and her occupational expectations on the other. The conflict is inevitable because traditional beliefs that establish men as breadwinners and decision makers can put many men under lot of anxiety which in turn can be a factor that precipitates violence. "Structural patterning of the family, cultural norms, and values and also political and economic system of a particular society determines who will injure and who will endure." Conflict arises when social realities of life change but the old thinking about women role to be the silent sufferers and submissiveness does not change<sup>[20]</sup>.

**e. Poverty and unemployment**

Violence traps women in a condition of poverty, or fear of violent situations. Violence against woman knows no geographical, cultural or linguistic boundaries, and affects woman without regard to their level of income. However for many women, poverty adds another dimension to the pain and suffering they experience as a result of violence<sup>[21]</sup>.

**f. Biological, physiological, and psychological reasoning**

With the biologically or physiological approach there are few explanations of the causes of domestic violence. One view focuses on evolution and the genetic characteristics that predispose men to be violent. Other emphasizes on brain structures, chemical imbalances, dietary deficiencies and hormonal factors such as testosterone. Genetic and hormonal explanations offer reasons for the greater predisposition towards violence in men than in women, but this is not applicable to chemical imbalances or dietary deficiencies<sup>[22]</sup>.

**g. Financial dependence**

It is the main cause in Indian society that women due to financial dependence have to suffer the subordination and victimization in silence<sup>[23]</sup>.

**h. Physical and mental impairment**

When women are becoming victim of series of violent attacks, they lose self-confidence and self-esteem and it affects the victim's daily functioning and mental stability. It ultimately increases their dependability on the abusive partner and they prefer to suffer silently than to quit the relations<sup>[24]</sup>.

**Law Relating to Domestic Violence in India**

After independence the most important safeguarding measure for women interest was the Constitution of India, which is held to be the base of the legal system in India. The makers of the Constitution of India were well aware of the sociology of the problem of emancipation of female sex. They have seen the position or weaker, marginalized,

vulnerable section of society and have realized the need to give them some special treatment in order to bring them to the mainstreams. They realized that equality was important for the development of the nation. In order to reduce disparity in class based system ruled for long terms in the country it was evident that to eliminate inequality, to provide opportunities for exercise of human rights it was needful to protect them from exploitation time immemorial and provide additional safeguards and social justice. The constitution<sup>[25]</sup> basically provided the equality before law and equal protection of laws to its citizens but at the same time equality in application was 'equality among the equals' and reasonable classification was allowed. It laid emphasis especially on protective discrimination under the constitutional provisions and enabled state to provide special legal safeguards to women. Apart from the constitutional provisions various enactments were made to protect and empower women viz., Indian Penal Code<sup>[26]</sup> and Criminal Procedure Code and various other laws under Special Law Immoral Traffic (Prevention) Act, 1956 Dowry Prohibition Act, 1961 The Child Marriage Restraint (Amendment) Act, 1979 Indecent Representation of Women (Prohibition) Act, 1986 Commission of Sati (Prevention) Act, 1980, the Protection of Women from the Domestic Violence Act 2005 etc. Apart from the legislature, judiciary is also working to protect woman's right by interpreting the laws that have been made by the legislature. Few land mark judgments and interpretations are described below.

In *M.A. Mony v. M.P. Leelamma*<sup>[27]</sup> the husband sought transfer of the wife's application under Section 12 of the Domestic Violence Act pending before the Magistrate to the Family Court where the divorce case was pending. The Kerala High Court rejected the prayer for transfer of the petition. This judgment is not relevant as the present case does not relate to transfer of an application from the Magistrate to the Family Court<sup>[28]</sup>.

In *Neetu Singh v. Sunil Singh*<sup>[29]</sup> the wife filed an application under Section 12 of the D.V. Act before the Family Court which was returned to be filed before the Competent Court. The Chhattisgarh High Court upheld the order holding that the application under Section 12 of the D.V. Act can be entertained only by the Magistrate having jurisdiction whereas the Family Court is competent to entertain an application under Section 26 in a pending matter. This judgment does not help the respondent as the petitioner has filed the application under Section 26 of the D.V. Act before the Family Court in a pending divorce petition<sup>[30]</sup>.

In *Nandkishor v. Kavita Criminal*<sup>[31]</sup> the husband challenged the order passed by the Magistrate under Section 23 of the D.V. Act without calling for the report from the protection officer. Bombay High Court dismissed the petition holding that it is not mandatory to obtain the report from the protection officer. This judgment has no relevance to the present case<sup>[32]</sup>.

In *Dr. Preceline George v. State of Kerala*,<sup>[33]</sup> the husband challenged the ex parte interim order passed by the Magistrate under Section 23 of the D.V. Act in an application under Section of the D.V. Act. The Kerala High Court laid down the guidelines for the Trial Courts which have no relevance to the present case<sup>[34]</sup>.

In *Shalu Ojha v. Prashant Ojha*<sup>[35]</sup> the Supreme Court dealt with the power of the Sessions Court to dismiss the husband's appeal on the ground of not making the payment

in terms of the conditional interim order. This judgment is not relevant to the facts of the present case <sup>[36]</sup>.

### Conclusion

Violence against women is manifestation of an unequal power relationship between men and women which has led to domination over and discrimination against women and to the prevention of full advancement of women. Denial of rights cannot be considered as culture nor can antiquate beliefs pretending to have religious sanction, be protected as a part of culture. Even otherwise, culture also needs to change and improve to protect human rights within their own groups <sup>[37]</sup>. The Women's rights' indicates that only when women are literate, can articulate their views of life, can organize and demand equality, protest discrimination and violence and then only they can be full and equal citizens and are able to enjoy all rights including human rights in reality. The supporters of women's rights have seen all the instruments in the reformation of human rights and to bring the women's rights in the mainstream of human rights jurisprudence. The real move worldwide started protecting their subjects of domestic violence through the specific laws passed in the country only in 1990s it is observed that "The development of the 90s has spurred a fuller realization of human rights of women. With the concerted effort and creative enthusiasm, action can follow awareness, and the obstacles before us as human resource based or political can undoubtedly be overcome one by one. The international community is expected to have co-operation and co-ordination of principled policies to addresses international guarantees of the human rights of women in the world.

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